Chapter 2: Program Implementation

> *"The Conference finds that developing, implementing, and evaluating financial assistance programs such as TIFIA is a crucial mission of the Department of Transportation. To ensure the financial and programmatic success of TIFIA, the conference strongly encourages the Secretary to establish an organizational structure within the Department in which financial assistance activities and programs can be closely coordinated and monitored."*
>
> **TEA 21 Conference Report (105-550)**
> **May 22, 1998**

2.0 Multi-modal Program Administration

As recognized by Congress, the multi-modal nature of TIFIA project eligibility lends itself to crosscutting program administration. A seven-member TIFIA Credit Council, representing the Budget, Policy, Counsel and Intermodal offices within the Office of the Secretary of Transportation (OST) and the Administrators of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Railroad Administration (FRA), provides policy direction and makes recommendations to the Secretary regarding the selection of projects for credit assistance.

In January 2001, OST and the three operating administrations chartered a Joint Program Office (JPO) in which to consolidate the day-to-day management responsibility for the TIFIA program. The JPO formally replaced a multi-modal working group of DOT staff that had carried out the initial program implementation, including outreach, rulemaking and project application cycles in 1999 and 2000.

For administrative purposes, the TIFIA JPO is housed within the FHWA Office of Budget and Finance. Given the modal diversity of TIFIA projects, the JPO regularly relies on staff of the operating administrations to assist with program implementation. Other critical assistance, enabled by the administrative funds available from TIFIA contract authority, comes from the external consultants and advisors hired by the DOT to assist the program. The TIFIA program utilizes outside assistance on matters relating to Federal credit issues, credit subsidy calculations and ongoing loan servicing. It also utilizes external financial and legal advisors to assist with credit evaluations and negotiations.

Exhibit 2-A depicts the TIFIA organizational structure within the DOT.

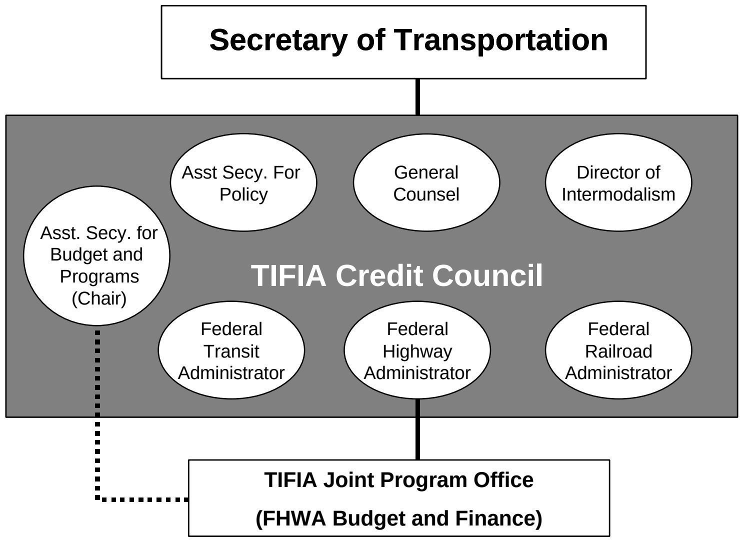
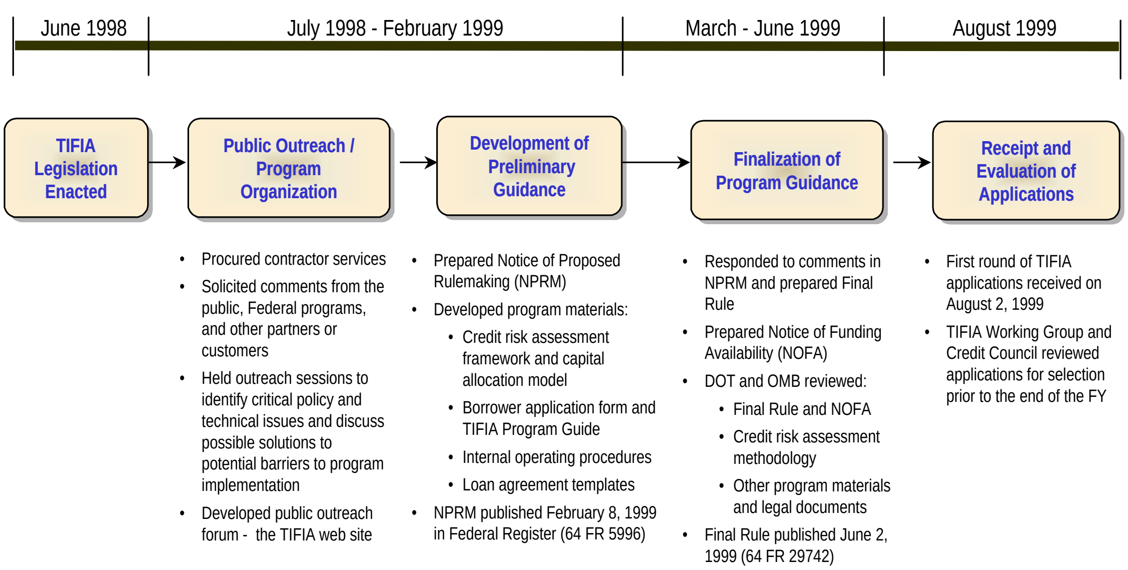


Exhibit 2-A: TIFIA Organizational Structure

2.1 Outreach and Rulemakings

After TIFIA enactment, the DOT conducted public outreach prior to beginning its formal rulemaking process. The resulting program regulations[16] guided the DOT's provision of TIFIA credit assistance for fiscal year 1999. Exhibit 2-B illustrates some of the DOT's key outreach and rulemaking activities during the TIFIA program's start-up phase.

Exhibit 2-B: TIFIA Start-up Timeline



In July 2000, based on early program experience, the DOT issued revised regulations[17] clarifying certain aspects of program implementation.

2.2 Selection and Funding of TIFIA Projects

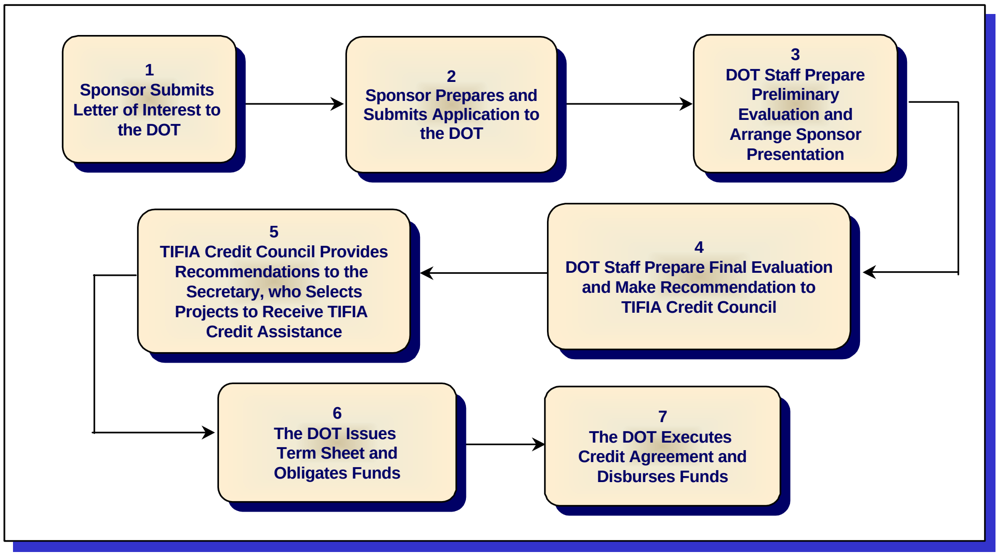
Similar to its discretionary grant programs, DOT's initial TIFIA project solicitations established deadlines for submission of applications. The TIFIA program announced such fixed-date solicitation rounds for each of Federal fiscal years 1999, 2000 and 2001.[18] The DOT revised this approach in May 2001, announcing[19] it would accept a TIFIA application at any time if the project had met the threshold requirements for review.

The application process formally begins when a project sponsor submits a letter of interest describing the proposed project, participants, benefits, environmental status and financial plan. Based on this information, the DOT ascertains the project's basic eligibility and readiness. If the project appears to meet the requirements, the TIFIA program invites the sponsor to submit an application for assistance. Since the end of FY 2001, the TIFIA JPO has required each TIFIA applicant to provide a non-refundable application processing fee of $30,000. This fee is based upon historical costs associated with the DOT's evaluation of TIFIA applications. In addition, the DOT charges each borrower a credit processing fee equal to a portion of the costs incurred by the TIFIA JPO in negotiating the credit agreement (approximately $100,000-$300,000 depending on the complexities of the financial structure and the length of the negotiations).[20]

The application must provide detailed project information, address the eight selection criteria, and include a plan of finance and preliminary rating opinion letter. The TIFIA JPO utilizes outside financial advisors to review the credit information provided in the written application and during a formal oral presentation to the DOT. Based on the application and any requested supplemental material, the TIFIA JPO prepares an evaluation and recommendation for the TIFIA Credit Council. The TIFIA Credit Council provides recommendations to the Secretary of Transportation, who then selects projects to receive TIFIA assistance. Exhibit 2-C below summarizes these processes.

[16] 64 FR 29742 (49 CFR 80), June 2, 1999.
[17] 65 FR 44936 (49 CFR 80), July 19, 2000.
[18] Each fiscal year, the DOT publishes a Notice of Funding Availability (NOFA) in the Federal Register, describing available credit assistance and underlying contract authority for the year.
[19] 66 FR 27747 (NOFA), May 18, 2001.
[20] Ibid.

Exhibit 2-C: Selection and Funding of a TIFIA Project



The DOT uses a two-step documentation process to commit and provide TIFIA assistance. First, a term sheet (setting forth the basic terms and conditions of TIFIA assistance) triggers DOT's obligation of contract authority. Second, a credit agreement defines the final terms and conditions under which the DOT will make funds available and authorizes the submission of requests for disbursements of funds. Prior to execution of this credit agreement, the project sponsor must satisfy all program requirements, including receipt of an investment grade rating on the project's senior debt obligations. Experience has shown that the time required to convert a term sheet into a final credit agreement can be as short as three months or as long as two years. Exhibit 2-D highlights key prerequisites for TIFIA funding commitments.

Exhibit 2-D: Key TIFIA Contractual Documents

Document	Major Prerequisites	Resulting Action
Term Sheet	Credit Assessment: Preliminary rating opinion letter on senior debt Environmental Clearance: ROD, FONSI, or Categorical Exclusion Planning Consistency: Inclusion in the STIP and long range plan	Defines amount of TIFIA credit assistance committed Obligates contract authority Establishes interest rate for line of credit
Credit Agreement	Credit Assessment: Investment grade credit rating on senior debt Appropriate Security Features: Rate covenants, etc. Updated Financial Plan: All necessary funds committed to the project	Defines final terms of assistance Establishes interest rate for secured or guaranteed loan Authorizes submission of requests for disbursement of funds

2.3 Credit Subsidy Calculation: Capital Allocation Model

As noted above, Congress provided contract authority in TIFIA to fund the subsidy cost of providing credit assistance. Calculating this long-term cost requires estimates of the default probability and recovery potential of each TIFIA credit agreement. In 1999, in consultation with the Office of Management and Budget (OMB), the DOT developed a capital allocation framework for assessing the credit risk and resulting subsidy cost of TIFIA secured loans, lines of credit, and loan guarantees.

The TIFIA capital allocation model incorporates the credit assessments of the major rating agencies. Similar to the capital adequacy models used by rating agencies to assess the creditworthiness of bond insurance companies, the TIFIA model links a project's credit rating to a specific probability of default according to type of project or revenue and by rating category. This approach is consistent with the TIFIA requirement that project sponsors receive credit assessments from nationally recognized rating agencies. Utilizing these independent analyses to supplement its own financial evaluations, the DOT can better assess the default risk of TIFIA instruments. Appendix B provides more detail on the TIFIA capital allocation methodology.

2.4 Loan Servicing

With the credit agreement in place, the TIFIA program accepts responsibilities that may last 35-plus years. An ongoing credit program requires mechanisms to collect loan repayments and provide detailed accounting of program activity. The DOT has contracted with a banking firm to assist it in carrying out a full complement of loan servicing activities. The TIFIA loan servicing system contains data on each credit agreement, including loan terms, borrower information, project description, credit ratings, disbursements, repayment schedule, payments received, loan balances and delinquency data.

The TIFIA loan servicing system incorporates Federal credit accounting standards.[21] The system supports the financial management and evaluation of the TIFIA credit portfolio and provides essential information to assist in monitoring the TIFIA projects.

2.5 Project Oversight and Credit Monitoring

The DOT has oversight responsibility for all transportation projects assisted with TIFIA funds. This encompasses the entire project life cycle: from credit agreement execution, through project construction and operation, through final repayment and maturity. The participating modal agencies (FHWA, FRA, and FTA) share construction oversight responsibility for TIFIA-funded projects following existing agency processes. The TIFIA JPO coordinates oversight and monitoring activities with the appropriate DOT field offices and modal representatives. Credit monitoring is a critical addition to the DOT's oversight responsibilities for these projects, and the TIFIA JPO has the lead in this area. Overall, the goal of TIFIA

[21] Standards are set forth in the Privacy Act of 1974, the Debt Collection and Improvement Act of 1996, the Federal Credit Reform Act of 1990, and the Chief Financial Officer's Act of 1990 as well as formal guidance provided in OMB Circulars A-123, A-127, A-129, and A-134 and Treasury's Financial Management Services publications, "*Managing Federal Receivables*" and "*Guide to the Federal Credit Bureau Program*." Additionally, the system incorporates system-specific requirements established by the Joint Financial Management Improvement Program (JFMIP).

project oversight and credit monitoring is to protect the Federal interest by managing risks to project delivery and loan repayment.

To carry out these responsibilities, the DOT will continually update information relating to construction progress and financial performance. Project sponsors must provide ongoing financial and project information during construction and until the debt obligation is fully repaid. Specified in each TIFIA credit agreement, this information includes annual updated financial plans and progress reports, audited financial statements, materials provided to rating agencies, cash flow projections, a certificate of compliance with rate covenants, and notices of adverse events. Oversight and monitoring will include site visits, periodic status meetings with the project sponsor, and reviews of the independent engineer or other relevant reports as applicable. The project sponsor also must provide, at no cost to the Federal Government, ongoing credit evaluations of the project and debt obligations (including the TIFIA instrument) prepared by a major credit rating agency throughout the life of the TIFIA instrument.